CLAIM OF HEIRS OF JACQUES CLAMORGAN.

COMMITTEE ON PRIVATE LAND CLAIMS,
HOUSE OF REPRESENTATIVES,
Thursday, June 2, 1910.

The committee met at 10.30 a. m., Hon. Cyrus Durey in the chair.

Mr. DUREY. I believe Mr. Bartholdt wants to be heard on the bill H. R. 17888.

STATEMENT OF HON. RICHARD BARTHOLDT, A REPRESENTATIVE FROM THE STATE OF MISSOURI.

Mr. BARTHOLDT. At the beginning of this session of Congress, Mr. Chairman and gentlemen, I made a brief statement in relation to this bill, and in order to refresh your memory in regard to it I will briefly repeat the facts. One Jacques Clamorgan was an officer of the Spanish navy while the Territory of Louisiana was still a Spanish possession. Instead of cash he received land in payment of the services he rendered to that Government. When the treaty of Paris was concluded, which transferred all that territory to the United States, this private ownership was guaranteed, as I understand, so that Mr. Clamorgan's land should have been inviolate. In the course of the years, however, it seems that squatters settled upon his lands, and that one tract after the other was taken from him. Now, the point is that there is no question about this land having been conveyed to him by the Spanish Crown. That is one fact. The other fact is that his heirs are not now in possession of one foot of that land.

Mr. SMITH. How much was it?

Mr. BARTHOLDT. Oh, there are several tracts, three or four large tracts, comprising thousands of acres of land.

Mr. SMITH. You do not know about how many acres?

Mr. BARTHOLDT. I do not know how many, but it is all contained in this petition which I should like to submit to the committee. The other fact is that he is not now, nor are his heirs, in possession of a single foot of that land, though there are no records of any sale on his part or conveyance on his part to anyone of this land.

In 1824, when quite a number of these claimants to lands under the Spanish treaty were given a right to establish their ownership, their right to possession in the courts, an act was passed by Congress to that effect, and at a night session of the House of Representatives, as I understand, after 12 o'clock, a rider was put on that bill barring Clamorgan and his heirs forever from establishing their rights in the courts. The facts are, as the attorney of the heirs of Mr. Clamorgan writes me, that a number of interested parties in St. Louis who had

an interest in those lands came to Washington for the purpose of inducing some one to put that rider on at night, and it was put on and the bill was so passed. Now, my bill simply provides for the repeal of that rider, so that the heirs may have the right to go to court to establish their rights, if they have any.

Mr. CARTER. That rider referred only to Clamorgan and his heirs?

Mr. BARTHOLDT. Only to Clamorgan and his heirs.

Mr. SMITH. What act was that?

Mr. BARTHOLDT. 1824. The act authorized claimants to Spanish lands to go into courts for the purpose of establishing their property rights, but the amendment says that Clamorgan and his heirs shall be barred from going into court for that purpose.

Mr. MILLER. Have you looked at the record to find out whether there is any reason why that amendment was put on?

Mr. BARTHOLDT. I have looked it up, and I can not find any discussion about it: it was simply put on and railroaded through in the wee hours of the morning.

Here is a petition, Mr. Chairman and gentlemen, which fully sets forth the facts. Of course it is too long to read, but I should like Mr. Rhodes, a former Member of Congress and a former member of this committee, who, when the matter was up in a previous Congress in a different form, took a great deal of interest in this case, to make a statement to you regarding the facts.

STATEMENT OF MR. M. E. RHODES, OF POTOSI, MO.

Mr. RHODES. Mr. Chairman and gentlemen of the committee, I had the honor, during the Fifty-ninth Congress, to serve as a member of this committee, but of the present membership I recognize very few faces this morning.

I appear here at the request of Mr. Alexander Gray, of the city of St. Louis, the attorney in fact of the Clamorgan heirs, who reside in that part of Missouri. When a member of this committee, gentlemen, I took an interest in this claim for the reason that I then lived, as I now do, in southeast Missouri, which is in a part of the country in which some of these grants were located. Because of that fact, I interested myself to the extent that I made considerable inquiry into this matter, having been assigned to a subcommittee, the duties of which were especially to inquire into the Clamorgan case. That subcommittee consisted of five members, of which Judge Smyser, of Ohio, was then the chairman. We spent a good deal of time investigating this matter. As a result of that investigation there were two reports submitted to the full committee. The committee report is under date of February 15, 1907, and is entitled "Claims of the heirs of Jacques Clamorgan."

Mr. MILLER. Can you give us the document number?

Mr. RHODES. I believe I have an extra copy, which I will file with the committee, if I may be permitted to file a copy of this report.

Mr. DUREY. Is this the report submitted by Mr. Smyser?

Mr. RHODES. This report contains both the majority and minority reports, namely, the report filed by Judge Smyser, as representing the majority of the subcommittee, and the report by myself, Judge Wallace, of Arkansas, joining me in this minority report.

Mr. BARTHOLDT. Of course the bill then under consideration was to confer jurisdiction upon the Court of Claims to hear the claims of the heirs of Jacques Clamorgan, but the present bill is entirely different.

Mr. RHODES. I will soon get to the point where I can state my understanding of the pending bill. I always have and now recognize that the Clamorgans have a substantial equity in these claims. There would appear, however, to be a difference of opinion as to the best method by which these rights ought to be determined. You will observe that Judge Smyser, in representing the views of the majority of the subcommittee, which views were accepted by the full committee, took the ground that because of the great lapse of time which had intervened between the granting of those claims by the Spanish Government and the present day—the statute of limitations having run against them in the State of Missouri, and also the federal statutes barring them, and especially the act referred to by Doctor Bartholdt—it would simply be a waste of time and unnecessary effort on the part of the Congress of the United States to undertake to adjust these matters at this late day. For instance, the majority report says that these people have slept upon their rights; cases are cited from the supreme court of the State of Missouri and from the United States courts in which the rights of these people, to a certain extent, were then determined. Hence the committee was of the opinion it would be useless at this time to undertake to dig into those old matters.

Now, gentlemen, I recognize that is a very natural feeling for a man to have about a proposition which is entirely abstract to him, and it was in that sense that this matter appealed to these gentlemen. But I live in the State of Missouri, and Judge Wallace lives in the State of Arkansas, near where these lands are located. I had never heard of the case before that time and had no interest in it at all, except I wanted to see what there was in the case. After investigation I thought I discovered an equity, a substantial right, a right of which the heirs of Clamorgan had been deprived. You will observe that in my report I simply state it ought never to be too late to do the right thing by these heirs. The fact of the matter is, as has been correctly stated by Doctor Bartholdt, that Jacques Clamorgan was entitled to certain lands from his Government at the time this particular territory was ceded by Spain to France and in turn ceded by France to the United States by the treaty of 1803. I have a copy of the treaty of Paris with me, but it is unnecessary to undertake to discuss in detail any portion of that treaty. Suffice it to say that the rights of Clamorgan were recognized in the treaty of Paris along with the rights of others who had substantial interests in the public lands at the time the United States acquired this territory. In other words, Clamorgan had an equity in these lands, and when the United States paid France $15,000,000 for the territory of course nobody understood that the private property of Jacques Clamorgan, or the private property of anybody else, was ceded by the French Government to the United States, because these equities were vested in those people at that time. Hence the United States Government never acquired any title in the Clamorgan lands.

Mr. MILLER. Do you know whether the land grants have been specifically located; that is, have the boundaries been fixed at all?

Mr. RHODES. They have. And the American state papers show that, of which I have copies here, although I find I have not the main paper in the case.

Mr. MILLER. Can you tell whether the commission appointed under the act of Congress, I think, of 1824, to determine the rights of claimants to Spanish lands, ever investigated this case?

Mr. RHODES. I do not know anything about that report.

Mr. MILLER. Does that apply to this Louisiana purchase? It did to Florida, but I do not know that it applied to Louisiana.

Mr. RHODES. I do not know. But if you will pardon me, I d sire that you get the point I was endeavoring to make, and that is this, that this is an equitable proposition now, because at that time the United States Government acquired no title to the private property of Clamorgan or of anybody else. However, after the United States had acquired the Louisiana territory much of this land—the Clamorgan land—was settled by different people, who perfected their titles under the general homestead laws of the United States and under the laws of our State. Of course the Clamorgans have long since been barred by the statutes of the State of Missouri and the statutes of the United States. The Bartholdt bill, as I understand it, seeks to remove that limitation so far as the Federal Government is concerned, but I have always had a little different idea about adjusting these claims on account of the inability of the United States to say to the State of Missouri how titles are to be perfected or owners divested of titles and occupants ousted of possession, and all those things. My idea would be that the Government should pay the Clamorgans a fair cash consideration for their property. But the pending bill will at least, gentlemen, put the United States right so far as its attitude toward these unfortunate people is concerned and is a step in the right direction. But even so, they would yet have the State of Missouri to deal with, which would leave them in almost as bad a condition as they now are.

I am here on other business and did not come here for this purpose exclusively; I could not have afforded to do so, but at the request of Mr. Bartholdt I consented to appear before the committee this morning. As I understand it, Mr. Gray is employed in the office of a railroad company in St. Louis and is a poor man, but was induced to take up this case because of the faith he had in the justice of their cause. Because of my belief that they have a substantial equity I was moved to make the effort I made when a member of this body.

Mr. MILLER. Do you know who the heirs are?

Mr. RHODES. Yes; I know a good many of them; some of them go by the name of Morgan, having dropped the prefix "Cla," and live in the city of St. Louis. One lives in New York City and another, Mrs. Mary B. Smith, lives in the city of Boston.

Mr. MILLER. They do not live in that part of the State, though?

Mr. RHODES. No; not exactly.

Mr. SMITH. Do you know how much of this land there is?

Mr. RHODES. I counted it up; I think about 60,000 arpens.

Mr. CARTER. How much is an arpent?

Mr. RHODES. A fraction less than an acre. That would be less than 60,000 acres.

Mr. SMITH. Did the Government issue patents to other people for this same land?

Mr. RHODES. For some they did, and some of it they even confirmed to Clamorgan. But the titles to many of those grants were not confirmed, as is evidenced by copies of the American state papers. I have some of them here. For instance, there was the New Madrid grant, the Little Prairie grant, the Cedar Islands grant, the Meremec grant, and many others, to which the title was never confirmed. In this connection I desire to call special attention to reference to the Meremec grant in the report filed by Judge Wallace and myself.

If, gentlemen, in your judgment, this matter should be referred to a subcommittee for consideration, I desire to call the attention of those whose duty it may be to consider it the copy of the report I have filed this morning. As I say, at the time this committee reported adversely upon the proposition, they simply dealt with the abstract proposition; while the minority report seeks to inquire into the equity of the claims.

Mr. CARTER. There have never been any trials of these cases, have there?

Mr. RHODES. Well, there was a determination of the titles in the supreme court of Missouri to some of these lands which were decided adversely to the Clamorgans. Of course that simply involved the question of possession and the right to perfect the title under the laws of the State.

Mr. CARTER. There has never been a trial as to the fundamental rights?

Mr. RHODES. Never as far as I know, at least not since 1824.

Mr. CARTER. Could they have gone into court before 1824? It seems the act of 1824 gives certain persons the right to go into court but barred these people.

Mr. RHODES. I will say these people could not have gotten into a federal court except by way of the courts of Missouri, and they did get into the federal court by way of the Missouri court, but even so they only got there upon the record in that particular case which did not touch the merits of their claims and on which the Supreme Court did not pass.

Mr. CARTER. They have never been in court for the trial of their fundamental rights?

Mr. RHODES. Never. The Bartholdt bill, at this late day, seeks to remove the barrier so far as the Federal Government is concerned, and I say is a step in the right direction.

Mr. MILLER. What relief would it give you to remove that barrier?

Mr. RHODES. Well, I must say that the relief we would get would simply be the removal of the federal statute of limitations which runs against these people specifically. But you will remember I said a while ago I have always entertained a different view of the method of settlement and believe that substantial equity can only be dealt out through an act to compensate these people in dollars and cents from the public treasury.

Mr. MILLER. This does not give you the right to go to the Court of Claims?

Mr. RHODES. Well, even so, then we would have the laws of Missouri as a barrier against the Clamorgan heirs in their efforts to perfect title under the laws of our State. Yet I am willing the claim be referred to the Court of Claims by any sort of bill Congress sees fit to pass.

Mr. MILLER. Well, we could not change the statute of limitations in your State?

Mr. RHODES. No, sir; this bill does not seek to do that; it only seeks to remove the barrier as far as the United States Government is concerned.

Mr. MILLER. I was wondering how this was going to help you.

Mr. RHODES. Just to that extent. I say, the fullest and completest means by which these people could be dealt with would be simply to recognize the substantial equity they have and pay them for it, just as the Government of the United States has done in a thousand cases. For instance, I have here a copy of a report known as the report on the bill for the relief of the Mission of St. James, in the State of Washington. That was a Catholic institution; that had title to certain lands prior to the admission of the territory which the Government took away from them. In 1893 Congress saw fit to simply pay the institution for the land that had been taken away from them. (See Private Land Claims Committee report, Dec. 12, 1892.)

Mr. MILLER. Is it your opinion the United States opened up this land for settlement, and they took it under the homestead laws?

Mr. RHODES. Largely so, and under all the different acts known to the country at that time by which title could be perfected. But the United States, in acquiring the Louisiana territory from France, took the lands subject to the title of private property owners; Clamorgan had these lands, he had these titles and the Government never acquired them; therefore, the Government allowed people to perfect title to land that the United States never owned, because France never owned it; Spain had parted with the title to this land prior to the time it was ceded to France and prior to the Louisiana purchase.

Mr. MILLER. What does the treaty say in respect to that private ownership?

Mr. RHODES. The treaty of Paris simply says in substance that the French Government passed title to all of its property save and except private property owned by the citizens of the territory who had perfected their title under the laws of the Spanish and French Governments.

Mr. MILLER. Does that treaty state that the right and title of those who have an interest in those lands shall remain the same as though the transfer had not been made?

Mr. RHODES. Yes; simply recites in broad and sweeping terms that the title to all this territory is ceded by France to the United States, except the title to land that had been perfected by private citizens.

Mr. MILLER. What was in the treaty by which Spain sold these same lands to France?

Mr. RHODES. The same stipulation. I'll give the exact language of the treaty upon this proposition before I close.

Mr. MILLER. None of these lands, as far as you know, have been lost to the Clamorgan heirs, or Clamorgan himself, by reason of a private arrangement between individuals?

Mr. RHODES. No. He had this great area of land in that wild country, and the United States just simply considered it public land and treated it as such. I suppose the truth is the Government sold it out at 12½ cents an acre, or a dollar and a quarter an acre, at different times, and in other ways allowed people to prove up under the general

homestead laws. I am certain that is true; in fact, all of that was brought out in a Missouri case reported in 12th Missouri, at page 238, and the case of Clamorgan against somebody in the 101st United States Reports, page 822.

Mr. MILLER. This Clamorgan was a Frenchman, was he not?

Mr. RHODES. He was a Spanish subject.

Mr. NEWCOMB. He was a Scotchman.

Mr. RHODES. The gentleman is right. The history of the case shows that he was a Scotchman, I believe.

Jacques Clamorgan was a Spanish subject to whom, prior to the year 1796, was granted various tracts of land in the upper Louisiana Territory by the Spanish Government. He died in St. Louis, Mo., in the year 1814, leaving all his property by will to his four natural children—St. Eutrope, Apoline, Cyprian, and Maximin Clamorgan—as shown by the records of the probate court of the city of St. Louis and early Missouri court decisions. In fact the history of the Clamorgan land claims constitutes an essential part of the early history of Missouri, as shown by the case of Landes et al. *v.* Perkins (12 Mo., 239), in the case of Isaac Landes *v.* Brandt (10 How., U. S., 348), and in many reports of United States land commissioners.

The following are the more important of these grants: The St. Charles grant, dated March 3, 1797; the new Madrid grant dated August 9, 1796; the Meramec grant, containing 8,000 arpens, dated September 20, 1796; the Cedar Island grant, containing 44,800 arpens dated March 25, 1800; the Little Prairie grant, containing 40 arpens; the exact date of this grant I am unable to give, but it is referred to in American State Papers, volume 2, page 727 under certificate No. 1278 dated November 13, 1811; and many other small grants in the vicinity of St. Louis varying in area from 7 to 800 arpens. These smaller grants are all mentioned in volumes 2 to 8, American State Papers, Public Lands Records, Washington, D. C.

The Clamorgans base their claim to these lands on the ground that Jacques Clamorgan rendered service to the Spanish Government, which can be proven, in furnishing men, money, and property, and otherwise aiding in planting colonies in the Louisiana Territory. This contention is borne out by the recognition of the Government by its agents in correspondence and the many duly authenticated documents that passed between them and Clamorgan, frequent references to the same being submitted in the petition now on file with the rest of the papers in the case. It is further contended by the Clamorgans that their property rights were fully protected and guaranteed under article 3 of the treaty of Paris, dated April 30, 1803. The following language is copied verbatim from the treaty:

> The inhabitants of the ceded territory will be incorporated into the Union of the States, and admitted as soon as possible conformably to the requirements of the Federal Constitution, to enjoy all the rights, advantages, and immunities of the citizens of the United States; and during this time they will be upheld and protected in the enjoyment of their liberty, property, and the religion they profess.

It must be remembered the Federal Government was a party to this treaty; and those to whom lands had been granted and who had acquired private property and property rights were no doubt, by the very language of the treaty itself, caused to look upon it as a promise of perfect safety and in absolute confidence. It should also be remembered in this connection that while the United States

Government paid France $15,000,000 for the Louisiana Territory, yet she did not pay one cent for the private property owned by Clamorgan or any other person. It is true the property rights of Clamorgan were not specifically mentioned in the treaty of Paris, but his rights were guaranteed and, as he thought, protected along with those of others under the broad and sweeping language of the treaty.

Reference might also be made with equal propriety to the treaty of San Ildefonso, of October 1, 1800, in which France agreed to uphold and protect the property rights of all citizens of the territory thereby ceded to her by Spain. The treaty of 1800 was simply a retrocession of the territory by Spain back to France. However, during the thirty-eight years of Spanish dominion, great progress had been made in the way of planting colonies and building cities and towns. Many obligations had been entered into between the Crown and citizens, such as Clamorgan, and it was but a proper and equitable recognition of those rights and obligations on the part of both the Spanish and French Governments in the treaties in this reservation of the property rights of citizens. After the acquisition of the Louisiana Territory by the United States, a new order of things was established. The Spanish law of prescription was first applied by the Federal Government in the settlement of land titles in the territory, and was in force until 1816, at which time the common law was adopted. In 1818 the statute of limitation was enacted. It therefore became difficult for a person seized of large land interests to perfect title because of the frequent changes in the law. In fact, all such citizens were in danger of losing, and many did lose, their inchoate titles. Yet the United States had guaranteed the protection of the citizen in the enjoyment of his property.

Under the Spanish law of prescription a system of land grabbing sprang up among the people, and which was all the more intensified by the enactment of the statute of limitations in 1818. With this general statement of the situation, we ought to be prepared to ask the question, Has the Federal Government kept its promise with Jacques Clamorgan and his legal representatives? If it has, of course this bill should not pass. If it has not, the bill should pass and thus settle a long drawn out controversy; one that has at various times occupied the attention of every branch of the Federal Government for a century. It should never be too late for our Government to do right by its citizens. Jacques Clamorgan was truly a pioneer, a pathfinder to a higher civilization.

Now, gentlemen, I am not going to take any more of your time. I thank you for your attention. I understand that whatever you gentlemen decide to do would not be the result of anything I might say this morning, but my belief is that if you will take up this matter in earnest, you will report this bill favorably.

Mr. CARTER. You have gone into this case pretty thoroughly, and your opinion is the State of Missouri is in no wise responsible in this matter, and that whatever error has been committed——

Mr. RHODES. Was committed by the United States.

Mr. CARTER (continuing). Was permitted to occur by the Federal Government?

Mr. RHODES. The United States committed it.

Mr. CARTER. And that the United States Government should make good?

Mr. RHODES. That is my position.

Mr. CARTER. And if the Court of Claims, or to whatever court this matter may be submitted, should find a verdict in favor of these people then it would be up to the Government to make proper compensation?

Mr. RHODES. It would be up to Congress to make good. I say the United States can not make good in land, because the public domain has been exhausted; the United States can not make good as far as restoring title in Missouri is concerned, because of the laws of Missouri. That is my idea and my belief. I thank you.

ADDITIONAL STATEMENT BY HON. RICHARD BARTHOLDT.

Mr. BARTHOLDT. I would like to say just another word. If it is true, as probably you lawyers will say, that this bill would afford no relief to these heirs——

Mr. RHODES. No complete relief.

Mr. BARTHOLDT. No complete relief—in other words, the bill does not authorize them to go into the Court of Claims, and even if they would go into the courts of Missouri these titles that have been acquired by limitation in Missouri would be held valid by any court; so if the committee should come to the conclusion that there is some other way of righting a wrong and affording relief in a case of this kind, where injustice has been done to those people, I would be very glad if you will report the bill in any other form you see fit to put it.

Mr. MILLER. Suppose we passed this bill, what would the heirs of Clamorgan do; what status would they have? I do not see what they could do that would be of any advantage to them.

Mr. BARTHOLDT. I hoped the repeal of that section would throw open the courts to them.

Mr. MILLER. If these were public lands there would be no difficulty, but as I take it the lands have been transferred by conveyances for many years.

Mr. BARTHOLDT. If you will read this petition you will find it has been done in several cases, in several of those grants where there was error on the part of the Government.

(Thereupon, at 12 o'clock m., the committee adjourned.)

CLAIMS OF THE HEIRS OF JACQUES CLAMORGAN.

COMMITTEE ON PRIVATE LAND CLAIMS,
Friday, February 15, 1907.

The committee this day met, Hon. George W. Smith in the chair.

The CHAIRMAN. Subcommittee No. 3, I believe, has a report to make in the case of the heirs of Jacques Clamorgan.

Mr. SMYSER. I do not know that I can do any better than to read the report of the majority of the subcommittee:

"We, the undersigned members of subcommittee No. 3, to whom was referred the bill (H. R. 23588) conferring jurisdiction upon the Court of Claims to hear, try, and determine the land claims of the heirs of Jacques Clamorgan, deceased, having had

the same under consideration, beg to submit the following majority report with the recommendation that the bill do not pass.

"Your committee is constrained to reach this conclusion for the following reasons:

"(1) It has serious doubts whether the subject-matter of the bill is proper to be referred to the Court of Claims;

"(2) It has serious doubts as to the substance of the claim made by the petitioners:

"(3) If the claimants have a claim or claims of merit they have a clear legal remedy open to them for the assertion, maintenance, and establishment of their claims; and

"(4) It would be establishing a dangerous precedent.

"(5) That the claimants have not shown affirmatively to the committee that they have exhausted all their remedies or rights to the land known as the Merramec grant or any part of it.

"The conclusions reached are deduced from the facts, as follows: Jacques Clamorgan was a Spanish subject to whom, prior to the year 1796, was granted various grants of lands from the Spanish Government. It nowhere appears that his title to these grants ripened and became vested, and when Spain ceded the Louisiana Territory to France the rights of Clamorgan were, in the language of the Supreme Court of the United States, 'inchoate,' and in the treaty of cession from Spain to France no guaranty of Clamorgan's rights was specifically mentioned. The same is true of the cession by France of the Louisiana Territory to the United States, and it is gleaned from the voluminous petition submitted to the committee that descendants of Jacques Clamorgan have asserted claim to these various tracts of land, and many claims have been adjudicated, both in the courts of Missouri and in the federal courts. These grants have been under consideration in the supreme court of Missouri and the Supreme Court of the United States. Generally, the findings of the courts were adverse to the claimants, but in two instances they had favorable decision.

"It is quite apparent that to but a single grant can claim of title now be asserted, and that is known as the Meremec grant. It is also apparent that this grant has been taken up under the land laws in various ways and is now occupied and in possession of persons claiming to be bona fide settlers and owners, and if the claimants have any right or title to this grant, or any part of it, their right or title can be established in an action of ejectment. It would be obviously wrong for Congress to undertake to dispossess such persons by an act of Congress if redress can be afforded through the courts.

"The Government has been particularly lenient in respect to these lands.

"Believing, therefore, that while the claim of the petitioners is vague, indefinite, and shadowy, and if they have a meritorious claim it can be asserted through the courts, we are constrained to report adversely upon said bill.

"M. L. SMYSER.
"CHAS. N. BRUMM.
"THOS. A. SMITH."

I may say, Mr. Chairman, that those are the views of the majority of the subcommittee. I do not know that I care to say anything more.

Mr. RHODES. Mr. Chairman and gentlemen, before reading the minority report I beg leave to explain briefly our position, in order that there be no misunderstanding on the part of the committee with respect to our purpose and the reason for presenting the minority report.

Now, on the main facts we are agreed with our colleagues. That is to say, we are agreed that the courts of the country, both state and federal, have passed upon many of these land grants, involving the title to the property claimed by the Clamorgans, and in a majority of instances the cases were decided adversely to claimants, but we are of the opinion there is one grant on which the courts have never passed, and that is the Merramec grant, and it is that grant to which Judge Smyser makes reference in his report.

For the reason we have not been able to find that the courts have passed upon the Merramec grant, as they have passed upon the other grants, we beg leave to offer a substitute bill for the pending bill and assign the reasons therefor in our minority report. We believe the courts have not passed upon the Merramec grant. For this reason and for the further reason that my colleague, Judge Wallace, and I both live in parts of the country in which many of these old Spanish grants are located, and as it can not be harmful to anyone and could not be a reflection upon the judiciary, we think it would be well to adopt the minority report and substitute for the bill. I will read the minority report, which Judge Wallace joins me in presenting:

"We, the undersigned members of your subcommittee No. 3, to whom was referred the bill (H. R. 23588) conferring jurisdiction upon the Court of Claims to hear, try, and determine the land claims of the heirs of Jacques Clamorgan, deceased, have had same under consideration.

"We beg to submit the following report and respectfully ask that the same be considered the minority report of your subcommittee.

"The bill seeks to confer jurisdiction upon the Court of Claims to hear, try, and determine the claims of the heirs of the late Jacques Clamorgan in respect to the land claims granted the said Clamorgan by the Government of Spain and alleged to have been secured to him by the Treaty of Paris, dated April 30, 1803.

"We find, first, this bill seeks to confer jurisdiction upon the Court of Claims to hear, try, and determine the title to the lands in question.

"It does not appear by the act creating the Court of Claims that it was the intention of Congress to vest in this court such power.

"Second. We find Jacques Clamorgan undertook to render (and certainly did render) certain services to the Spanish Government and for these services received certain grants of land in the States of Missouri and Arkansas."

I will say here these people have filed with the committee a very voluminous petition—one that would require a great deal of time to go through carefully.

"It is contended by the petitioners that the Treaty of Paris recognizes the rights of the said Clamorgan, therefore binds the United States. We fail to find any specific recognition of the land claims of Clamorgan in the Treaty of Paris.

"We do find, however, in Article II of the Treaty, a general reservation of all private property in the cession of the Louisiana Territory."

Mr. GILBERT. Is there any controversy in the subcommittee over that proposition?

Mr. RHODES. No, sir. That point was not discussed in the subcommittee. Mr. Smyser says there is no controversy on that point. I wish to say, however, it is on this provision of the Treaty of Paris we ground our contention.

"This, we believe, is sufficient to bind the United States Government with respect to the land claims of Clamorgan, if the grants to the said Clamorgan had been defined and the title thereto confirmed by the Spanish Government and recognized by the French Government prior to April 30, 1803.

"From a study of the case of Landes et al. *v.* Parkins, in the 12th Missouri, page 238, decided in 1848 or 1849; the case of Isaac Landes *v.* Brant, in the 10th Howard, U. S., page 348; the case of Glenn et al. *v.* The United States, in the 13th Howard, U. S., page 250; and the case of Clamorgan *v.* The United States, in the 101st U. S. Rept., page 822, in which the title to certain of the lands claimed by Clamorgan and his heirs have been determined, there is a recognition throughout by the Government of the Clamorgan grants, except the New Madrid and St. Charles grants."

I will say here that the St. Charles and New Madrid grants were never recognized by the United States, because Clamorgan failed to fulfill the conditions of his contract with Spain.

"Third. We find in the various court decisions above quoted that the title to all the Clamorgan grants has been determined in the courts, both State and Federal, except to the Meremec grant."

I wish to say here this is within 50 miles of where I live.

"This is a tract of land in the State of Missouri including 8,000 arpens and situated on the Meremec River.

"The Department of the Interior, through the Commissioner of the General Land Office, in a letter dated January 4, 1906, states that the Meremec grant was, on February 24, 1874——

(This was seventy-five years after these grants were first recognized.)

"recommended for confirmation by the recorder of land titles in the State of Missouri and confirmed by the United States Land Office. It is further stated by the commissioner that Hon. J. H. McGowan, Member of Congress, was requested to introduce a substitute for H. R. 2613, Forty-fifth Congress, second session, in the year 1879, having for its object the confirmation of the Meremec grant. The files of the House fail to show that such a bill was introduced in Congress, but H. R. 2613 was introduced and referred to this committee.

"For the reason that the courts, as far as we have been able to ascertain, have not passed upon the Meremec grant, and for the further reason, the legal representatives of Clamorgan are barred by the statute of limitations, under the laws of Missouri, we recommend that the following bill be introduced in the House as a substitute for H. R. 23588, and, when referred to this committee, that the chairman be authorized to refer it to the Court of Claims for consideration under the terms of the Bowman Act.

"M. E. RHODES.
"R. M. WALLACE."

This is the substitute bill which we offer:

"A BILL For the relief of the heirs and legal representatives of Jacques Clamorgan, deceased.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That eight thousand arpents of land, situate in the State of Missouri on the River Meramec, and known as the Meremec grant, being a concession from the Spanish Government to Jacques Clamorgan, dated September twentieth, seventeen hundred and ninety-six, be, and the same is hereby, confirmed to the heirs and legal representatives of Jacques Clamorgan, saving and reserving, however, to all adverse claimants the right to assert the validity of their claims in a court or courts of competent jurisdiction either of the State of Missouri or of the United States.

"SEC. 2. That if it shall be found that any tract or tracts confirmed as aforesaid, or any part thereof, had been previously located by any person or persons under any law of the United States, or had been surveyed and sold by the United States, this act shall confer no title to such lands in opposition to the rights acquired by such location or purchase; but the individual or individuals whose claim or claims are hereby confirmed shall be permitted to locate an equal amount of public land that may be subject to entry or purchase: *Provided*, That such location shall conform to the legal division and subdivisions, and shall not interfere with the rights of other persons.

Mr. GILBERT. As to these people who have been in actual adverse possession of the property for fifty years and have paid the taxes, etc., how are you going to get rid of them?

Mr. RHODES. Under the first section of the bill their remedy is in the courts of our State.

Mr. CUSHMAN. It would seem to me that you place the cart before the horse, as it were. That is, it throws upon the people who are in actual adverse possession for a great many years the burden of going in and establishing their claims, whereas it would seem from what little I have heard of this discussion that that burden, if any, should be thrown upon the heirs of Jacques Clamorgan to go in and establish their rights?

Mr. RHODES. Not at all, for the reason they are in possession, and if there be heirs of Clamorgan, who claim to have rights and equities in the property, it would devolve upon them to go into court and establish their rights.

Mr. CUSHMAN. What is the specific objection to permitting the heirs of Jacques Clamorgan going into the courts on their own behalf and instituting proceedings against these settlers who are now in open and notorious possession? What is the objection to that form of procedure?

Mr. RHODES. None on earth, except that the door of opportunity is closed against them forever by virtue of the statute of limitation, which would undoubtedly bar them all.

Mr. CUSHMAN. Is not that one of the penalties for sleeping on their rights?

Mr. RHODES. Yes; but Mr. Justice Miller, in the 101st United States Report, says, in the determination of one of these cases, the courts have been very lenient, owing to the peculiar circumstances of the case.

Mr. SMYSER. It seems to me that as far as your substitute bill ought to go would be to remove the statute of limitation and let these people go into court.

Mr. RHODES. I doubt if we can do that.

Mr. GILBERT. It looks to me like this is a judicial question instead of a legislative question.

Mr. RHODES. You are quite right, and I hope we may not be misunderstood in our position. We are against the pending bill, for the reason it seeks to confer jurisdiction upon the Court of Claims to hear, try, and determine the title to this property, and we do not believe this court is clothed with sufficient authority.

Mr. GILBERT. What do you say as to conferring authority by piecemeal on the Court of Claims—jurisdiction in special instances?

Mr. RHODES. We are against that and for that reason do not favor the bill. The point I wish to make is that we only ask that this case be referred to the Court of Claims for investigation and information. We are not seeking to confer jurisdiction upon the Court of Claims to hear, try, and determine the title to this property, as seems to be the purpose of the pending bill. I think it is clearly apparent this committee should not undertake to confer jurisdiction upon the Court of Claims, but we would call upon the Court of Claims to give this committee information with respect to the grant, upon which the courts do not seem to have passed.

Mr. CUSHMAN. The bill says title "is hereby confirmed to the heirs and legal representatives of Jacques Clamorgan."

Mr. RHODES. We do not propose to present this bill to the House in this form. We are simply getting the facts involved in this controversy in definite form before this committee, and ask the committee to refer those facts in this form to the country

Claims, that we may see what they have to say on the subject. I should not undertake to put that bill through the House of Representatives with the information I have at present upon the subject, because it is a voluminous subject and involves many intricate and technical legal questions affecting the rights accruing to Clamorgan and his legal representatives under the treaty of Paris, various acts of Congress, and numerous court decisions.

Mr. CUSHMAN. I confess that I do not understand what you mean. Is this a substitute bill which is offered in lieu of the other bill?

Mr. RHODES. It is. We make it clear in the language of the substitute that we are only seeking to refer this bill to the Court of Claims for consideration. We are not seeking to put this bill through Congress. We are only referring this bill to the Court of Claims. The original bill, however, does seek to confer jurisdiction upon the Court of Claims to hear, try, and determine the title, and we are against this bill. We want to get our substitute bill before the Court of Claims for their opinion with respect to this one claim, the Meramec grant. We would not undertake for a moment to recommend that anything be done, directly or indirectly, by the political branch of the Government involving the title to large tracts of land on which the courts have passed, because I take it the acts of the judiciary should be final, and I for one am willing to recognize, and do recognize their acts, both state and federal.

Mr. SMITH, of Texas. What interest is it claimed that the Government has in this property in order that it can grant any relief at all? Is not this a controversy between private parties?

Mr. SMYSER. Yes, sir. With all due respect to our friends, I think this is just the trouble. There are some poor people who claim to be descendants of Jacques Clamorgan, and they are not able to make the investigation here in the Land Office that they want to make to satisfy themselves as to whether or not they have any rights or title to any of this land, and therefore they want Congress to go on and either refer this matter to the Court of Claims or by some action relieve them.

Mr. SMITH, of Texas. Who possesses the land now?

Mr. SMYSER. As to this particular grant I can answer that question best by reading the petition. In speaking of this Meremec grant the petition says:

"On February 13, 1879, this office transmitted—that is, the Land Office—through the Department to Hon. J. H. McGowan, House of Representatives, a draft of a proposed bill to confirm this and other claims, said draft being proposed as a substitute for H. R. 2613, entitled 'A bill to confirm certain private land claims in the State of Missouri.' This grant enjoys the extraordinary distinction, so far as I am aware, of being the only one that the Government has expressed a wish to confirm. The territory covered by this grant is already taken possession of by adverse claimants, and has been built up, and it is likely that, unless Congress gives instructions to the Government to see that this property be handed over to the possession of the Clamorgans without having to start ejectment suits, which your petitioner hopes Congress will do in justice to the Clamorgan heirs."

Mr. BENNET. Is that their own petition?

Mr. SMYSER. Yes, sir.

Mr. GILBERT. What equity is there aside from the technical legal question, in behalf of these heirs, who have been asleep for one hundred years?

Mr. SMYSER. I confess that after the study and consideration I have given to this matter I have not been able to discover any.

Mr. GILBERT. What is the reason that the lapse itself does not constitute a bar, aside from the statute of limitation?

Mr. SMYSER. I think it does.

Mr. RHODES. I want to say, in response to the suggestion of Judge Gilbert, that in 1845 James K. Polk signed a patent to some of the Clamorgan lands. You say that these people have been asleep on their rights for one hundred years, but after these people had been asleep on their rights fifty years the President of the United States saw fit to put his name to a patent.

Mr. GILBERT. That is too long ago. Without knowing anything of the merits of the case—I am just looking around to get the facts—it occurs to me that the heirs have been slumbering a long time, and assuming everything that they say to be true, still, between those people who have taken adverse possession and have paid their good money for the property and have paid the taxes and cultivated and developed the property, and these heirs, it would be conceding their contention that the fault was on the side of the present occupants.

Mr. RHODES. In response to that statement, if I had reason to believe that everything my colleague has assumed was true, and if I could turn to the court decisions and find that the courts of my State and my country had passed upon the title to these properties, then I would be the last man on earth to undertake to refer this matter to the Court of Claims; but for the reason we fail to find the courts of the country

have passed upon the Meramec grant we are seeking further information through the Court of Claims. The courts have passed upon the title to the land embraced in other grants, perhaps not more than two.

Mr. GILBERT. I thought it was stated both in the majority and minority reports that the land in the Meremec grant had been taken up and was now in the adverse possession of the other people.

Mr. SMYSER. Here is what they say:

"There is still another grant of 8,000 arpens on the Meremec which has not been confirmed. In volume 2, page 567, Jacques Clamorgan appeared and claimed 8,000 arpens of land on the River Meremec, being a concession from Zenon Trudeau, dated the 20th of September, 1796, for which a survey was certified on the 28th of February, 1806. I find also a reference to this claim in a letter from the honorable Commissioner of Lands to the honorable the Secretary of the Interior, under date of January 4, 1906, which states that the claim of 8,000 arpens situated on the Meremec River, in the State of Missouri, was, on February 24, 1874, recommended for confirmation by the recorder of land titles in the State of Missouri, acting as commissioner under the act of June 22, 1860 (12 Stat. L., 85). This office approved said commendation."

Mr. RHODES. I can see no reason why we can not refer the matter to the Court of Claims for information. My colleague, Judge Wallace, and myself are not asking the Congress of the United States to enact this bill into law. In fact, I should be reluctant to do so until I had thoroughly satisfied myself that these people had the rights and equities as set out in this petition and could not be enforced in any other way.

Mr. WALLACE. That was my object.

Mr. RHODES. I would not confer jurisdiction upon the Court of Claims to hear, try, and determine the title to the property. It is not within the scope and purpose of the law creating the Court of Claims that it be clothed with such power, and I thoroughly agree with Judge Gilbert that we should not undertake to piecemeal out authority or jurisdiction upon this court for such a purpose. If our substitute bill has been improperly drawn, we would very willingly agree to its being properly amended. Our intention was only to get the matter before the Court of Claims for investigation and have the court refer it back with the result of their findings.

Mr. SMITH, of Texas. For what purpose?

Mr. RHODES. For the purpose of ascertaining the status of this one particular grant.

Mr. SMITH, of Texas. With a view to further legislation?

Mr. RHODES. I would not necessarily say that. I would say, as a member of this committee, with a view to satisfying myself with respect to the contention raised in this petition.

Mr. SMITH, of Texas. It seems to me we should not put a burden on the Court of Claims without some definite object in view.

Mr. WALLACE. The definite object is to inform the committee.

Mr. RHODES. As a lawyer, from my knowledge of this case, I would not undertake to go through it thoroughly and inform myself as to the details in less than six months' time. This committee has not the time.

Mr. SMYSER. What would you do if you were a lawyer representing these claimants?

Mr. RHODES. They are poor people, without means, and they would have to employ a lawyer on a contingent fee, and I am certain I would not undertake a case of this kind.

Mr. SMYSER. Is not the most of the information at hand at the Land Office, and does not the department say that while it does not feel satisfied to detail a clerk to do this work that the books are open?

Mr. RHODES. What would you say with reference to this proposition: Let the chairman of the committee write a letter to the Commissioner of the Land Office or to the Secretary of the Interior and call for information with respect to this Meremec grant?

Mr. GILBERT. I should be very glad to have all the information we can get. From the views of both the minority and majority, it seems to me that it would be a work of supererogation upon the Court of Claims—the burden of investigating the details of a transaction—when it is conceded upon all sides that this property is now in the adverse possession of settlers, and has been for years.

Mr. BRUMM. Supposing this matter was submitted to the Court of Claims and the Court of Claims should report, after a thorough investigation, that the Clamorgan heirs did have a good title, then what would you recommend to be done, if they got the most favorable report they could get?

Mr. RHODES. In that event I should suggest favorable legislation by the Congress of the United States.

Mr. BRUMM. To do what; to enact favorable legislation?

Mr. RHODES. I have no remedy in mind other than that named in our substitute. That would be the only specific remedy I could think of at this time. I have not gone further into the case.

Mr. BRUMM. If there is anything we can do by which we can facilitate the development of facts which would enable these people to ascertain all the facts that they want to know, I am in favor of doing anything that can be done, and if there is any way by which you can reach that end I will join you, but to put upon a court the burden of hunting, as it were, for a needle in a haystack or for throwing a dragnet for something that may possibly exist, I think we are going too far and would establish a bad precedent.

Mr. RHODES. I do say if I should be satisfied that these people have equities in these properties, then I should feel it my duty as a Member of the Congress of the United States, on which people have in the past found it necessary to rely, to go the limit. I am not prepared to say specifically what the remedy should be, but if the court convinced me that these people had rights I should not hesitate to enforce them.

(The majority report of subcommittee No. 3, submitted by Mr. Smyser, was adopted.)

Thereupon the committee adjourned.

Petition to the honorable the House of Representatives of the United States on behalf of the heirs of the late Jacques Clamorgan in respect to the land claims granted to him by the Government of Spain and secured by the treaty of Paris for the cession of Louisiana of April 30, 1803, by Alexander Gray, attorney in fact of the said heirs.

Humbly showeth: That your petitioner, in his effort to get at the present status of the claims made by the Government of Spain to Jacques Clamorgan, while that power exercised political and actual sovereignty in what is now known as the Province of Upper Louisiana, addressed a communication, dated January the 17th of this present year, to the Hon. Richard Bartholdt, a Member of your honorable body, requesting his kindly offices with the Government of the United States with the view of obtaining particular and positive information as to the number and present status of the grants made by Spain to the said Clamorgan, especial reference being made in that communication as to the number of the claims confirmed by the Government, and the names of the parties to whom they were confirmed.

In a short time that honorable gentleman forwarded to me his replies, one from the honorable the Secretary of the Interior, bearing date January 25th, and another from that same honorable gentleman, dated February 3rd, this latter also inclosing a letter addressed to the honorable Secretary of the Interior from the honorable the Commissioner of the General Land Office in reply to my request for said information.

These communications gave me the information that "the exhibits of private land claims in Missouri, on file here, make reference to about 20 claims in the name of Jacques Clamorgan, and it is submitted that it would involve considerable labor on the part of this office to look up the history of each claim and make out the desired list for Mr. Gray. It is most respectfully suggested that the records of this office are open to the inspection of Mr. Gray or anyone he may designate and that this (General Land) office will lend assistance in locating the records, as it is thought that the time of a clerk of this office should not be spared from other pressing work to make out this list."

The petitioner very readily admits that such a duty necessarily involves a considerable amount of labor on the part of these departments of the Government, yet, with all due respect to the considerations submitted by both these honorable gentlemen, the Secretary of the Interior and the Commissioner of the General Land Office, let me humbly ask, Have the Clamorgan heirs no rights, under the treaty of Paris for the cession of Louisiana of April 30, 1803, which the Government in any way ought to consider and respect?

According to the communication referred to, by their own showing it is distinctly stated that the exhibits on file in Washington make reference to about 20 claims in the name of Jacques Clamorgan.

During the period of the Spanish sovereignty, in what was then known as the Province of Upper Louisiana, Jacques Clamorgan not only received all these various grants of land, which are shown on the files in Washington, at the hands of the authorities under the King of Spain; but, in fact, was also secure in his legal abiding possession of these lands so designated in these concessions, and was in full enjoyment of a perfect title and actual possession according to the customs and usages of the Government conveying them at that time.

In his capacity as an officer of the Spanish Crown, it was his duty to his king to uphold and maintain, at his own personal cost, a goodly number of armed men, and to undertake expeditions, which cost him considerable personal expense, and he had also to perform other duties, which were detailed for his attention and performance,

at the behest and command of his immediate superiors under the Spanish Crown. Not only was he an officer under the Government, but he was also under the pay of the Crown, and, as such, was fully recognized by his Government.

His salary was, according to the records, ten thousand dollars per annum—out of which, however, he had to provide the means and the money outlay for carrying out his duties, which the records also state to have been considerable. While he, as a crown officer, had to bear the burden of his immediate expenses in all his undertakings, it also appears from the records that, when he asked for the payment of the regular installments of his salary, the crown treasury was generally empty or very low, and it was with this difficulty he had principally to contend. Failing to receive the regular installments of his salary at the proper time, he, after waiting for the convenient season for the Government to pay him in cash what it had faithfully stipulated to do, asked for the payment of his salary in lands, instead of money. This was in fact his only recourse, and it was granted by the authorities without any demur; in fact the Government very willingly and also very readily granted his request, and paid him his salary in land grants. This accounts for the frequency and the extent of his grants of lands. The Government paid him in lands instead of cash. This is also clear from the evidence of the records. The titles, therefore, to these various land grants, with which his name is now associated, and which have always been so very unsavory in the eyes of the United States officials who were called upon, in the performance of their duties, to examine and pass upon the validity of his titles, did not trouble themselves, it would appear from the records, to take this fact of his varied and eminent services to the Spanish Crown into their consideration at all. In the eyes of these officers of the United States these grants were merely concessions from the Spanish Crown, and as such concessions or grants carry with them the idea of something got for nothing, they came to the conclusion that they had a perfect right to refuse Clamorgan any confirmation of them on any consideration. This conclusion on their part was simply not only erroneous but mischievous, and accounts in a great measure for the unfavorable, if not positively partial and hostile, sentiment entertained by the United States officials, as well as judges, in considering these Clamorgan claims.

In contrast with these considerations, let us examine the records again, and find what were the impressions and opinions which the officers of the Government of the King of Spain held in reference to Clamorgan. Referring to the letters and correspondence of Baron Carondelet, and Governor Trudeau, and others, these gentlemen, as well as others, have left on record that the services and sacrifices made by Clamorgan to the Spanish Crown were very considerable, and Baron Carondelet affirms that Clamorgan deserves all the consideration and recompense that it is in the power of the Crown of Spain to give him. When, therefore, the Spanish Government gave Clamorgan a title to a piece of land, it was a perfect title, so far as they could make it so, because it was their full and cordial recognition, so far as the power of the authorities of the Spanish Crown went, of the eminent services and unflinching energy, as well as a commendation for the self-sacrificing spirit with which Clamorgan served his Government. These letters are also on record, and can be called in evidence, and show a marked contrast with the censorious spirit which characterized the officials of the United States.

To put the matter very plain, these grants were the payments Spain made to Clamorgan for special and faithful services rendered to the State, and, as such, were recognized by that Government.

Looking, then, at the grants made by Spain in their real and true light to Clamorgan as their pay or reward for his personal service to the State, and not as mere grants given for nothing, we find the titles given him by Spain are as perfect as they could be made at the time, and therefore, as such, are entitled to the consideration and confirmation of the United States Government.

The American State Papers contain many references to these claims, as well as petitions to Congress for their confirmation. These papers also abound with complaints and petitions to Congress representing the arbitrary manner in which the commissioners, as well as the federal courts which have jurisdiction under the several acts of Congress, in which the settlers complain bitterly of the harsh manner in which these officers and tribunals attack their Spanish titles, as well as the dictatorial and arrogant spirit in which these titles are handled.

I will cite only one instance out of many which might be quoted from the American State Papers showing the spirit. It is contained in these papers, and is No. 646, Twentieth Congress, first session, and is a petition of the undersigned citizens of Missouri, respectfully showing to Congress that the United States officials, in examining the proofs of their ownership to their various lands, by their titles granted by the King of Spain, or his governors and representatives, are exceedingly dictatorial

in their conduct and manner toward them; also stating, in a most marked and emphatic manner, that under the rulings which they practice only about three claims out of every hundred presented by them have so far passed their scrutiny and been recommended for confirmation. These petitioners also show that the commissioners of the King of Spain, in their proclamation, use the following unequivocal language, to wit:

"That all concessions or property of any kind soever, given by the governors of these provinces, be confirmed, though it had not been done by His Majesty."

These petitioners also show that this proclamation was published on the 18th day of May, 1903, at New Orleans, after the date of the treaty of cession to the United States, in presence of the French commissioners, and have never been objected to by either the French or the American Governments; that the letter to M. D'Abadne is to be found in the Appendix to the United States Land Laws, and the proclamation of Salcedo and Case Calvo is on the files of the Department of State at Washington City.

Besides these, other references are given fully and particularly in these volumes of the American State Papers, while there are many details of these grants also given in White's Compilations, pages 34, 35, 38, 39, and 41, where also particular reference is made to the services of Jacques Clamorgan to the Government of Spain. These are public documents and exhibit in a marked degree the true state of affairs at that time, and are therefore surely entitled to some respect.

It is a fact established beyond question that Jacques Clamorgan had not only a perfect title to all his grants, but had also complete, absolute, and perfect possession of all the lands designated in these grants under the Spanish Crown; and had not the change in sovereignty from Spain to the United States taken place, both Clamorgan and his legal heirs would have been, to all human reasonings, in possession of his grants to the present time. When a province or a country changes its political masters, is it not a fact, recognized the world over, that the rights of private property in all civilized countries are always fully and legally recognized and protected by the new sovereignty? The same is true in this particular instance. Spain did not abrogate the titles or grants she had made to Clamorgan. She simply transferred them to the new political power, under the treaty of Paris of April 30, 1803.

Under a former treaty Spain bound France to confirm all the grants she had made in the Louisiana Territory, and France, in like manner, bound the United States to ratify and confirm these same grants Spain had made, and the United States gave its solemn pledge and assurance that this compact would be fully and satisfactorily carried out. The United States paid fifteen million dollars for the territory outside of these grants, but not one cent for any ground in the province that was segregated or set apart and contained or included in these grants. Hence these grants, as such, were not, in the best sense of that term, United States territory. More so, Spain and France and France and the United States made a solemn covenant or treaty, that, while the United States was to exercise complete and sole political power in the new territory, France on behalf of Spain, and France and the United States, very distinctly provided in and by the treaty of cession of April 30, 1803, that the parties now in possession of the land and the territory by the grants of Spain were to continue undisturbed in full possession of their lands and property, and the United States undertook to ratify and confirm these settlers in the lands and property which they held under the former Government of Spain. This treaty is, therefore, the guarantee and the Magna Charta of the United States Government to the settlers on this territory for the purpose of confirmation, protection, and security. It is, moreover, the only supreme law of the land by which these claims can be, in justice to these settlers as well as the Government, finally and satisfactorily settled.

It is the purpose of this petition not so much to give the areas of these several grants nor their extent, that information being fully and only in the hands of the Government, they being all so well known that it is only necessary to name the grant and the action taken by the Government towards a settlement.

In looking into the numerous acts passed by Congress, the petitioner finds that a claimant to land had to make personal application to the commissioners appointed by the Government under the different statutes or by his fully authenticated agent. According to these acts none but the legal claimant or his legal agent could thus appear before the commissioners and get the claim confirmed. Not only had this to be done, but the commissioners were very jealous, it would appear from the records, lest anyone should illegally and unlawfully appear before them and make claim to any land granted by the Government of Spain to which he was not the legal as well as the lawful grantee.

The petitioner finds that while Congress was very anxious and also very jealous lest any but the genuine and legal owners of land under this treaty should get confirmation of their grants, the rulings of the Interior Department and the General Land

Office were very different, they being loose and irregular. According to their own showing, in a letter dated Washington, D. C., November 30, 1900, addressed by the honorable Commissioner of the General Land Office to the honorable the Secretary of the Interior, which is forwarded with this petition and marked No. 1, on page 6 of said letter is the statement that "This office held at the time that it mattered not who received and located the certificate, as the location and subsequent patents would, in accordance with the rule governing in such cases, issue in the name of the confirmee, and would accordingly enure to the benefit of the proper parties, whose identity should be determined by the proper judicial tribunal."

According to this extraordinary ruling, which, it is needless to say, is quite at variance with and very antagonistic, as a matter of fact, to the spirit as well as the letter of the act of Congress, that it introduced a new mode of procedure in any action taken by a genuine claimant to get his title confirmed by the Government. By this new and certainly novel ruling the old safeguard of personal application of the claimant was completely demolished, and anyone was at perfect liberty to make application for confirmation of any claim desired, as the grounds upon which he made application were not questioned by the Government, it would seem, in any case. This ruling opened the doors wide for that unprincipled and nefarious dealing in other people's property which has since borne such an abundant harvest of evil fruit that the Government itself has been defrauded out of large areas of land in almost every State. By this ruling, according to its own statement, anyone could apply for confirmation of a claim and have it confirmed, which was actually done in a good many instances with the claims of Clamorgan. Not only was this the case, but when the attention of the Government was drawn to the fact that they had confirmed a claim belonging and granted to Clamorgan to parties not Clamorgans, the reply of the Government invariably was to the effect that the Government had confirmed this claim to the parties making such application for confirmation, and that, confirmation having been made, the duty of the Government in this particular instance was completed. If confirmation had been made to the wrong parties, not Clamorgans, that question must be decided before a competent tribunal. That the Government had confirmed a grant to parties having no legitimate interest in the grant seemed not to disturb the officials of the Government. The only reply to the heirs was, "You must fight for your interests through the courts." The treaty of Paris is very clear that the Government would protect the property of the settlers. It is an established fact that litigation is very costly, and the Clamorgans, with all their property gone, were not in any position to go into the courts and fight the parties who were made rich through their grants having been confirmed by the Government, without consideration of their interests, to others, not Clamorgans, and having no genuine title thereto.

A very remarkable case, showing the mischievous result of the operation of this unconstitutional ruling, is very apparent in the Cedar Island claim, about which there has been considerable correspondence between the Government and your petitioner. The following is the history of this grant as briefly as it can be made.

It appears from the records that one named Isaac T. Green agreed at his own cost to get this concession confirmed by the Government, and, when confirmation was obtained, he agreed to pay Henry and Cyprian Clamorgan the sum of six thousand dollars for all their right, title, and interest in said lands, and, until that money was paid over to them, they were to hold the lands as security. This deed from Green to the Clamorgans was dated February 16, 1852, and is marked "No. 2" of the documents accompanying this petition.

Jacques Clamorgan left a will dated the 1st of October, 1814, which was probated on the 7th of November of that same year, naming as his universal heirs to all his property, his four natural children, namely: St. Eutrope, Cyprian M., and Maximin and Apauline. St. Eutrope is said to have died in the fall of 1824, and Maximin is reported to have died in the following spring or summer, both having died intestate, unmarried, and without issue. Cyprian M. died, leaving a will dated February 22 and probated May 27, both in the year 1827, and recorded March 13, 1828, leaving all his interests to his sister, Apauline, in the State of Missouri. The said Apauline is said, according to the statement of Cyprian Clamorgan, her youngest son, to have married her cousin, a nephew of the said Jacques Clamorgan, after whom he was named. There is no official record of this marriage, however, as far as can be traced. Hence the conception was formed that she was an unmarried woman, and that her children were illegitimate. So generally was this report accepted that the legislature of Missouri, at the instance of James E. Mumford, an unprincipled attorney in this city, for the purpose of his controlling the certificate of relocation, No. 232 (marked "No. 3"), containing $38,111\frac{10}{100}$ acres of land, which the Government had granted to satisfy this claim, the original grant for which was 44,800 arpents, to the legal representatives of Regis Loisel, that the said Mumford had himself appointed by the probate court here as administrator de bonis non of the intestate estate of Cyprian M.

and Maximin Clamorgan, in defiance of a petition to that court of Henry Clamorgan, at that time living in this city—the second son of the said Apauline—and also of the fact Cyprian M. left a will dated, probated, and recorded as noted above. Nevertheless, the said Mumford had an act passed by the legislature of Missouri (see Laws Mo. 1863, p. 209) (marked "No. 4") for the so-called purpose of legalizing Henry and Cyprian Clamorgan, the then only living heirs of Jacques Clamorgan and also the only living legal representatives of Regis Loisel. With all his craft and ingenuity, he was defeated in his purpose of obtaining from the Surveyor-General Loughborough said certificate. A craftier, a more subtle, as well as a more influential schemer, Theophile Papin, obtained the prize.

The report (marked "No. 5"), copied from the Missouri Republican of that date, shows this gentleman's fine engineering skill. The said Apauline died, leaving a will dated the 11th, and probated on the 12th of May, and also recorded on the 15th of May, all in the year 1830, leaving all her estate to her children, Louis, Henry, Louisa, and Cyprian, the latter of whom was born after the execution of her will and only nine days before her death. Louis appears to have been married, and left, at the time of his death, in 1851 or 1852, two boys, named Leon and Julius, who survived their father, Louis, only a short time. Louisa appears, from the record, to have died an infant of some six or seven years of age, leaving only Henry and Cyprian as the only living legal heirs and representatives of Jacques Clamorgan. The powers of attorney in fact held by me were given to me, and signed by Cyprian Clamorgan, and by his children and surviving widow by his second marriage of the said Henry Clamorgan, and also by Louis P. Clamorgan, the eldest son of said Henry Clamorgan by his first marriage; also, since the death of Cyprian Clamorgan, by Mary Belle Clamorgan, wife of Augustus Smith, of the city of New Bedford, in the State of Massachusetts, said Mary Belle Clamorgan, or Smith, being the only legitimate daughter and heir to the interests of the said late Cyprian Clamorgan, who was born only nine days before the death of his mother, the said Apauline Clamorgan. James E. Mumford, as administrator de bonis non of the presumed intestate estate of Cyprian M. Clamorgan and his brother Maximin, tried, in every possible way, to get possession of the relocation certificate No. 232, but outwitted by Theophile Papin, as already stated. He advertised said certificate and sold it twice at different dates, as shown in the settlement marked "No. 11" and "No. 12," but was unable to get possession thereof and deliver it. See inventory marked "No. 11," settlement marked "No. 12," certificate copy of transcript marked "No. 13," and copies of dismissal from the circuit court marked "No. 14" and "15," in regard to the action of Mumford.

Theophile Papin, as already mentioned, secured the possession of said certificate of relocation No. 232, but on what legitimate grounds he received it from Surveyor-General Loughborough is easily seen, if you will please look at the signature on the back of that document. Papin claimed to be one of the natural heirs of Regis Loisel. Notwithstanding the fact that Isaac T. Green and James E. Mumford worked to get confirmation on behalf of Henry and Cyprian Clamorgan from the Government, James E. Mumford, as administrator de bonis non, presumed he was entitled to the possession of this certificate. Papin claimed it on behalf of himself and his coheirs as the property of his ancestor, Regis Loissel, ignoring the sale of the property in 1805 to Clamorgan. Later, however, he pretended that, Green having failed to pay the two young Clamorgans the purchase price he agreed to by his deed after confirmation, which is an established fact, and by which failure on Green's part the property, by the terms of his own deed, reverted back intact to the lawful possession of the Clamorgans, Papin claimed that the Clamorgans sued Green in the circuit court here for the purchase price of the property, and got judgment, and that the Papins brought judgment. (See 32 Mo., p. 285.)

When, however, your petitioner, in the latter end of the year 1885, called upon Mr. Papin to show his authority for his possession of this certificate No. 232, he was greatly perplexed, as the correspondence between your petitioner and Mr. Theophile Papin, and his attorney, Mr. E. T. Farish, will show. This correspondence is marked "No. 6." The Papins were large dealers in real estate in this city, and the fact that they have no deed on record showing that they bought this property throws considerable doubt on the integrity of their statements made to your petitioner. This fact, from inference alone, would be that no real purchase price was paid, or the Papins, who were sharp and shrewd business men, would have a legal and authentic conveyance from the Clamorgans.

So far as the deed given by Green is concerned, it has been shown that he never kept his bargain nor paid the Clamorgans any money, and yet if you refer again to the certificate of relocation No. 232, it will be found that Isaac T. Green is apportioned one-sixth of the whole certificate, Henry Clamorgan one-third of the whole certificate, and that Theophile Papin and the other Papins, and others not Clamorgans, are entitled to one-half of the whole certificate.

While Henry Clamorgan, as shown in the certificate, is entitled to one-sixth of the whole certificate, the fact remains that he got nothing. The Papins, who conducted this transaction were too much for the easy-going and too trustful Henry Clamorgan.

Theophile Papin died some years ago, leaving about two million dollars' worth of property, principally real estate, and James E. Mumford died about that time, leaving about a quarter of the above-named amount.

Referring again to the article copied from the Missouri Republican, dated March 20, 1863, and marked "No. 5" of the papers in support of this petition, the said article is a report of the night session of the house of representatives of the legislature of Missouri, when the bill Mumford had framed was submitted for the action of that honorable body. The report is not certified by a notary, but the original copy on file at the office of the said newspaper is still extant, and from which your petitioner made the copy submitted, and which is true. It will be noticed that that report states "that one of the Clamorgans was in the rebel army." In refutation of that statement, your petitioner herewith attached to said copy of article, marked "No. 5" of the papers, an original letter, dated New Orleans, February 13, 1865, written by George H. Hanks, colored, 99th Regt. U. S. C. I., and addressed to Capt. E. A. Morse, asst. quartermaster, and is as follows, viz: "Permit me to introduce to your favorable attention my friend, C. C. Morgan, esq. (a contraction for Cyprian Clay Morgan, and which Cyprian sometimes used), a resident of this city, of indisputable loyalty. Any attention you may be pleased to favor him will be duly appreciated by, very respectfully, your obedient servant. (Signed) Geo. H. Hanks, Col. 99th Regt. U. S. C. I."

Also a letter dated Washington, D. C., January 19, 1869, from United States Senator, the honorable C. D. Drake, bearing testimony also to the loyalty of Cyprian Clamorgan, during that struggle; also forwarded attached to No. 5 of the papers accompanying this petition.

These letters demonstrate the fact very clearly as to said Cyprian's domicile during this period, and also refute completely the statement made in the legislature on that occasion.

This report shows how these Clamorgans were handled and defrauded in reference to their claims, which were just as well as legal and legitimate, in regard to this claim.

Cyprian Clamorgan was a loyal Republican all through his life.

In reference to the Baden claim, the patent for which was signed by President Grant on February 12, 1874, the Clamorgan heirs instituted ejection suits for the recovery of their property in the state circuit court here, and after fighting for twelve or fifteen years they got a judgment in their favor from the supreme court of Missouri.

When this court rendered them this judgment, the adverse claimants offered the Clamorgans forty thousand dollars for the surrender to them of all their rights and interests in this property. It was, however, considered by their heirs that, owing to the stubborn and persistent efforts of these adverse claimants having kept this property tied for so long a period, the Clamorgans came to the conclusion to refuse this offer, there being about thirteen acres left for the heirs after all deductions were made. Immediately on this conclusion of the legitimate heirs becoming known to these adverse litigants, they presented a petition to the said supreme court, and, without much trouble, got this court to recall their verdict in favor of the Clamorgans, and render judgment adverse to them in the case. This decision is marked "No. 7" in the papers forwarded with this petition. Thus this matter stands to-day.

In further reference to this claim, your petitioner would state that, during the tenure of Mr. Cleveland's first administration, your petitioner addressed a letter to President Cleveland on the subject of this claim. This communication was answered by the President, intimating in his reply to me that my letter to him had been referred to the Attorney-General, and that a further reply would be forwarded when that officer decided upon what action would be taken. Not having received any further notice of what action the Government would take, your petitioner addressed a communication to the Attorney-General. That gentleman duly informed me the matter had been referred to the district attorney of the United States for the eastern district of Missouri, and advised me to see him.

Your petitioner called on Mr. Bashaw, then holding that position, and discovered that this action on the part of the Attorney-General had caused considerable commotion and alarm among the adverse claimants, all of whom were Democrats of very pronounced caste. When your petitioner presented Mr. Bashaw with the letter from the Attorney-General he looked a good deal astonished and puzzled.

He, however, informed me that it would be two or three months before he could look the matter up and make his report. After considerable delay, however, as stated in the letter No. 1 from the General Land Office, Mr. Bashaw's report was forwarded on January 9, 1889. Mr. Bashaw distinctly and repeatedly assured me that his report would be in favor of the Clamorgans, but I saw that the effect of the investiga-

tion was a dead letter, Mr. Bashaw himself being one of these gentlemen who believed that the party affiliations were the most sacred of human ties, and right or wrong he stood by his peers, although he misrepresented his decision to your petitioner.

Your petitioner would now revert to the case of Landes et al. *vs.* Perkins (12 Mo., 151) in reference to the grant of one by forty arpents, formerly known as the Little Prairie, and later called the Washington Avenue grant. The honorable the late Commissioner of the General Land Office, states in his letter to the honorable the Secretary of the Interior, dated November 30, 1900, marked "No. 1" of the papers accompanying this petition, on page 4 of said communication, that this land "was the subject of a suit decided by the Supreme Court of the United States, in the case of Landes *vs.* Brandt (10 Howard, 348), from which it appears that Clamorgan became divested of the land in 1808. This land was also the subject of a suit decided by the supreme court of Missouri, in the case of Landes et al. *vs.* Perkins (12 Mo., 151), where a complete history is given to the claim, and also of the Clamorgan family." Taking the judgment of the court in the supreme court of Missouri in the case of Landes et al. *vs.* Perkins, that court, in passing judgment in that case, says: "A question of importance in the clause is, as to the operation of the confirmation to Clamorgan, whether it conveyed the legal title of the lot to him or to Conner. After much deliberation, no tenable grounds have been perceived on which the opinion can be based that, by the confirmation, the legal title of the lot became vested in Conner. * * * When Congress enacted that the death of a patentee at the date of the patent should not void the grant, but that it should enure to the benefit of the heirs or assignees of the patentees, it clearly expressed its sense of this question.

"Nothing can be found in the acts of 1805 or 1807 which warrants the opinion that the confirmation passed the legal title of the estate confirmed to any other person than the claimant, or his legal representatives who filed their claims before the board of commissioners, as assignees under the original claimant from the Spanish Government. If one is a representative and he does not prefer his claims as such for confirmation he is not regarded by the act. The fourth section of the act of 1805 prescribes that every person claiming lands should file his claim. The sixth section of the act of 1807 directs that reports of the final decisions in favor of claimants be made to the Secretary of the Treasury, and that a certificate shall be issued to the claimant, showing that he is entitled to a patent; thus clearly evincing that, in the contemplation of Congress, the legal title could only pass to the claimant."

By this extract from the court above mentioned it is clearly shown that the statement made by the late Commissioner of the General Land Office, under the date already referred to, is incorrect and misleading.

One other fact in connection with this Washington avenue property is that, while Clamorgan was in possession of this grant, yet that he had not the confirmation of this claim from the Government until November 13, 1811, and then, by the terms of the acts mentioned, it was not apparently in the power of even the Supreme Court of the United States to dispossess him. There has been a large amount of irregular and unconstitutional litigation in connection with these grants, arising to a great extent through the irregular ruling of the Interior Department, in contradistinction to the procedure inforced by Congress, as manifested by its acts, in filing the claims of the settlers. It appears that this property, under pretense of Clamorgan being due some taxes or debt, was sold by the sheriff to John O'Fallon and Jesse D. Lindell for the sum of thirty-three dollars, currency, on the 27 day of July, 1826, which was easily worth one hundred dollars. This sale shows how matters were done. Clamorgan died in 1814. When the patent for this property was issued by the Government on the 18th of June, 1845, it was given into the possession of parties that were not Clamorgans, presumably under the same rulings that have worked so much damage and loss to many of the grants held in his name on the files at Washington City.

This sale, at such a figure, for a property easily worth, as stated, one hundred dollars, shows how utterly reckless and with what brazen effrontery these parties acted in this matter. This sale is unconstitutional and unwarranted in every way. Yet, notwithstanding, this property stands in his name, and is in point of fact his property. Several years ago your petitioner offered, through a friend, the Clamorgans title to the National Boatman's Bank, which has its building on this property. The senior attorney for the bank acknowledged to my friend that they had no legal and legitimate title to their holding, and suggested an arrangement for this purpose. It was thwarted, however, by the cashier, who said that Charles Green stood between the bank and the Clamorgans, and he gave us his warranty deed; besides he is worth over a million dollars. Such is the status of this claim.

Other grants have been disposed of, and confirmed by the government, of which your petitioner, as their representative, has not the slightest knowledge, nor can he obtain such information under present circumstances.

Mr. Bayard, who was Secretary of the Treasury under Mr. Cleveland's administration, said, in speaking of the riots at New Orleans in connection with the Italian trouble there years ago, that "when the courts failed to give justice, it was competent and proper to appeal to the Government."

In referring to the action of the courts, it was only recently that the President of the United States, in speaking of the decision of the federal court in Chicago in the case of the beef trust, was very emphatic in his disapproval of the judge's finding in that cause and declared that such decisions made the laws of the United States a farce. This proves very conclusively that even judges give erroneous and mischievous decisions in cases brought up before them for adjudication.

Your petitioner will now humbly draw the attention of your honorable House to three claims which the Government has not yet confirmed. Two of these have, however, been adversely decided by the Supreme Court of the United States. They are as follows, to wit:

The New Madrid grant, dated August 9, 1796;

The St. Charles grant, dated March 3, 1797; and

The Merrimac grant, dated September 20, 1796.

The first-mentioned claim (New Madrid) was for 536,904 arpents and was decided against the Clamorgans at its December term, 1851. (13 Howard, 250.)

The second mentioned is the St. Charles grant. (See U. S. Reports, 822.) A copy of this decision is marked "8," and forwarded with the other records.

The decisions in these cases were, to a considerable extent, against the heirs, owing, it was claimed, to the uncertainty as to their superficial areas. To any who has taken the pains to investigate these, and other grants, one could easily realize that, in determining with any degree of accuracy the exact areas of these claims, according to the description of bounding lines designated by metes and bounds, in the grant itself, would, at the present day, or even at the time these cases came up for adjudication and settlement by the courts, be a very difficult matter, the topography, of the lands being often entirely changed by the improvements, and other causes, in a few years; another reason being that, when these measurements were made and boundaries specified, there was neither that exactitude in their measurements nor that accuracy of description of property at that time, as to natural landmarks, metes, and bounds, which characterizes the careful action of the present day. Yet, with all this uncertainty, often so severely criticized by our modern courts and jurists, and specialists in this class of work, if these matters were considered more in the spirit of candor and fairness to all the parties interested, and less in that critical, cynical, and supercilious spirit, a conclusion would be arrived at more in harmony with fact and justice than has been done to a great extent in such matters. (See No. 8, copy of decision in St. Charles claim, enclosed with this petition.)

With all due respect to the learned and very profound disquisitions of eminent judges before whom these cases were tried, the fact remains that the equities, the principles, and, in fact, the eternal verities of the case were completely ignored and left untouched. The decisions of the honorable courts were rendered on exceedingly partial and technical grounds and not by any means in accordance with either the letter or the spirit of the treaty of April 30, 1803.

The court speaks with great fervor of the irreconcilable difference of the conjectural plats, on which the Government is to be calculated out of land scrip worth over $2,000,000, and that "the selection of one of these plats almost at hazard is to be made the foundation of the judgment, is directly opposed to the construction we have given to the section of the act under which the court exercises this jurisdiction." What does the treaty say?

If the learned and honorable judges had as carefully and faithfully studied the requirements of the treaty of April 30, 1803, which is the parent and the spring of this act, they so very learnedly and eloquently declaim, they would doubtless have discovered that instead of the Government being calculated out of $2,000,000 by having these conjectural plats taken as the foundation for a judgment of the court, they were, as a matter of pure and simple fact, in reality calculating the Clamorgan heirs out of a very large portion of the inheritance which their ancestor, Jacques Clamorgan, had lawfully worked for and as lawfully earned in rendering honorable services to Spain, which was of intrinsic as well as of recognized value by that power. Moreover, the great fact that these grants were segregated from the public domain and in actual possession at the time of cession to the United States clearly demonstrates the truth of the statement that these lands never did honestly and legally belong to the United States, and that therefore any decision to make them such was unjust as well as unlawful. This treaty is the great Magna Charta of the Spanish claimant and the only law by which these cases can be legitimately considered and settled.

I have endeavored to show the true status of the matter in relation to the St. Charles grant, as I have considered it in all its bearings. The New Madrid grant was rejected by the Supreme Court of the United States at its December term, 1851 (13 Howard, 250), being disposed of by that court in a similar way to that of St. Charles grant. The points and considerations, as well as the decisions, in both cases, by the Supreme Court of the United States are very one-sided and partial, and are not, in either case, decided according to the requirements of the treaty of April 30, 1803.

There is still another grant of 8,000 arpents on the Merrimac which has not been confirmed. In volume 2, page 567, Jacques Clamorgan appeared and claimed 8,000 arpents of land on the River Merrimac, being a concession from Zenon Trudeau, dated the 20th of September, 1796, for which a survey was certified on the 28th of February, 1806. I find also a reference to this claim in a letter from the honorable Commissioner of Lands to the honorable the Secretary of the Interior, under the date of January 4, 1906, which states that the claim for 8,000 arpents situated on the Merrimac River, in the State of Missouri, was, on February 24, 1874, recommended for confirmation by the recorder of land titles in the State of Missouri, acting as commissioner under the act of June 22, 1860 (12 Stats., 85). This office approved said commendation. On February 13, 1879, this office transmitted through the department to Hon. J. H. McGowan, House of Representatives, a draft of a proposed bill to confirm this and other claims, said draft being proposed as a substitute for H. R. 2613, entitled "A bill to confirm certain private land claims in the State of Missouri." This grant enjoys the extraordinary distinction, so far as I am aware, of being the only one that the Government has expressed a wish to confirm. The territory covered by this grant is already taken possession of by adverse claimants and has been built up, and it is likely that, Congress will give instructions to the Government to see that this property be handed over to the possession of the Clamorgans, without having to start ejectment suits, which your petitioner hopes Congress will do in justice to the Clamorgan heirs.

According to the Constitution of the United States, section 8, no bill of attainder or ex post facto law shall be passed. Article XIV, section 1, says: "Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

I also find, in looking into the federal statutes having reference to Spanish claims, that appended to, and included in the act of Congress (4 Stat. L., p. 52, May 26, 1824), the following paragraph, copy of which I herewith forward, to wit: Chapter 173, section 12, of this act provides that this act shall not apply to the claims of Jacques Clamorgan. The language of the act in reference to the bar of the claims of Jacques Clamorgan is as follows, to wit:

"*Provided*, That none of the provisions of this act shall be applied to a claim of the representatives or assignees of Jacques Clamorgan, deceased, lying between the Missouri and Mississippi rivers, and covering parts of the counties of St. Charles and Lincoln, in the State of Missouri." Marked No. 9, forwarded with the inclosures accompanying this petition.

This paragraph, incorporated into this federal statute, made under the sanction and the authority of the United States, provided that Clamorgan shall not get his property in defiance of the treaty of Paris of April 30, 1803. This clause in this act is also in direct violation of Article VI of the Constitution of the United States, that the treaties entered into with other powers shall be the supreme law of the land. According to the text of this iniquitous statement, no crime is laid to his charge. There is nothing to show that he had committed treason, or any felony against the United States, and yet, without due process of law, about ten or fourteen years after Clamorgan had passed over the bourne from which no traveller has ever returned, we find this astounding statement among the laws of the land. How it got there is not told nor the reason why, nor of what if any crime he was found to be guilty. Nothing is mentioned to throw any light on this wicked and infamous statement; and yet, there it stands, and has stood, without any question being asked to this day, for nearly sixty-two years, the greatest outrage ever perpetrated on an innocent, honest man. We have been told time and time again if we wish to get our property the only way to get it is to go into court. We have gone into court, and in the New Madrid and St. Charles grants we have been refused confirmation.

According to a communication dated November 30, 1900 (marked No. 1), from the honorable the Commissioner of Lands, Mr. Binger Hermann undertakes to show the honorable the Secretary of the Interior that Clamorgan was divested of his rights in the Washington avenue property of one arpent by forty, in 1808. If that very good gentleman had taken the trouble to look up the files in his own office he would have found that Jacques Clamorgan did not get the certification of confirmation for this tract until November 13, 1811. Until that time he held the lands under his Spanish title. He refers to a suit in court in 1808 in which the judgment went against Clamorgan;

but there were so many irregularities in these proceedings that the verdict was allowed to drop.

Then there is the Baden property, to which I have already referred, and which was brought recently in the federal court, and which also went against the heirs, and no matter what court we entered we got defeated, and the reason is not far to seek when we find a United States statute arrayed against the Clamorgans. This bar, by its language, is presumed to bar only the St. Charles claim, but notwithstanding this declaration this bar has been universal in its operation against any proceedings instituted by the Clamorgans to redeem their property.

Every man in this great and broad land wishes and enjoys the privileges, the liberties, the protection to life and property and all our belongings which is afforded under the laws which emanate from the Government of the United States. From every corner of this great Commonwealth arises the glad song of liberty and security. We boast of being the free-born citizens of this mighty nation. We call it the land of the free, and have certainly wherein to boast, for we are the children of a grand and glorious heritage. Truly the lines have fallen to us in pleasant places. As a nation we are proud of our national history. It tells the story of our prowess on land and sea. We have snapped asunder the fetters of the slave. We have taken up arms not to help, but to crush the oppressor. As a nation we are a power on the side of righteousness and truth and civil as well as religious liberty. We have also as a nation extended our borders, and are willing that other nations far away from our shores and people whose customs and language we are only beginning to learn or understand should know not only of our might in war, but also that they should share and rejoice in the benign and healthful blessings of peace that we as a people so lavishly enjoy. Yet, amidst all this blaze and glory of national prosperity, from the secret recesses of the last six decades comes the dark shadow of a mighty wrong. Nor does it come from the foul hand of an assassin, who, pistol in hand, demands the all of the wayfarer. Strange as it may seem, yet nevertheless too true it is that the power that controls the destinies of this great people, that power struck that man, Jacques Clamorgan, and his memory, and his heirs, not because he was guilty of any crime, for there is no crime laid to his charge, and the power that struck him, and struck him to the death, was one of the laws in the federal statute book of this mighty people. Simple in word, yet mighty in effect was that astounding paragraph, that mischievous enactment. It seems some evil spirit straddled this vile rider onto an otherwise fair and honorable measure. I honestly and fully believe, without either the knowledge or consent of the great majority of the honest, able men who were at that time the honorable Members of the House of Representatives. Yet, there it stands, in all the hideousness of its malignity, pointing its gaunt fingers at the fair structure of national greatness you have reared, and laughing that great horrid laugh for six long decades and defying justice in the land.

In the name of the great God, in the name of our common humanity, in the name of truth and freedom and love and righteousness, let this vile statute stain the ermine of your statute book no longer. Let it be blotted out forever from your records. Surely the United States can afford to be honest and do the right with one of her own citizens.

And your petitioner will ever pray.

Very respectfully submitted.

A. GRAY,
Attorney in fact for the Clamorgan heirs.

ST. LOUIS, MO., *April 28, 1906.*